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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,191	12/03/2003	Joel A. Kubby	D/A1750D	5161

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EXAMINER
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CULBERT, ROBERTS P

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,191

Applicant(s)

KUBBY ET AL.

Examiner

Roberts Culbert

Art Unit

1763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1, 2 and 4-19 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent application Publication 2003/0029705 A1 to Qiu et al. in view of IBM Technical Disclosure Bulletin (TDB) NN 82024500.**

Regarding Claim 1, Qiu et al. teaches a method for fabricating a bistable microelectromechanical system (MEMS) based system, comprising: lithographically defining at least one beam having a specified non-linear shape corresponding to a first stable state of the at least one beam. (Paragraphs 59, 62, 203 and 207)

Qiu et al. teaches that the bistable beam structure is well suited as a micro clip for switching optical fibers (Paragraph 200), but does not explicitly teach providing the optical fibers between a position of the first and second stable states. However, the claimed arrangement is old in the art of forming bistable optical switches. The IBM TDB reference teaches that it is known to provide optical fibers

Art Unit: 1763

between a positions of the first and second stable states of a bistable switch. (See provided disclosure and Figures 1-4) It would have been obvious to one of ordinary skill in the art at the time of invention to provide optical fibers to the bistable actuator of Qiu et al. in order to fabricate an optical switch in the art recognized manner.

Regarding Claims 2 and 5-13, Qiu et al. illustrates that a beam is defined by the lithography process. The beam has a certain geometry (Paragraphs 59, 62) inherently including a certain curvature, height, length and width. The geometry of the beam inherently determines the second stable state, the throw distance, and the force curve as claimed by applicant.

Regarding Claims 17-19, Qiu et al. illustrates boundary conditions for the beam may include fixed, bearing and spring boundary conditions. (See for example, Paragraphs 76, 132 and 133)

Regarding Claims 14-16, Qiu et al. teaches that various actuators are suitable for use with the beam, including a thermal impact actuator (Paragraph 178) and a zippering electrostatic actuator (Paragraph 155).

Regarding Claim 4, Qiu et al. illustrates various stops for contacting the beam between the first and second stable states. (See Figures 12d-12f, for example) Note that although it is not explicitly stated, the beam must reach the contact point just before reaching the second stable state in order to contact the stop as illustrated by Qiu et al.

**Claims 1, 2, 5-14 and 19-22 are rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Patent 6,303,885 to Hichwa et al. in view of U.S. Patent Application Publication 2004/0022484 to Sigloch et al.**

Hichwa et al. teaches a method for fabricating a bistable microelectromechanical system (MEMS) based system, comprising: lithographically defining (masking and etching) at least one beam having a specified non-linear shape (Figure 1A) corresponding to a first stable state of the at least one beam.

Hichiwa teaches that the bistable switch is suitable for actuating optical fibers, but does not explicitly teach providing the fibers between a position of the first and second stable states. However, Sigloch et al. teaches an optical switch (Figures 1a and 2a) that provides optical fibers between first and

Art Unit: 1763

second actuator positions. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to provide the actuator of Hichiwa with optical fibers between first and second actuator positions in order to provide an optical switch in proximity to the actuator mechanism as illustrated in Sigloch et al.

Regarding Claims 2 and 5-13, Hichwa et al. illustrates that a beam is defined by the lithography process. The beam inherently has a certain geometry including a certain curvature, height, length and width. The geometry of the beam inherently determines the second stable state, the throw distance, and the force curve as claimed by applicant.

Regarding Claims 20-22, Hichwa et al. teaches patterning the at least one beam in a device layer of a silicon-on-insulator wafer (Col. 4, Lines 29-57), defining a height of the at least one beam using a thickness of the device layer (Col. 8, Lines 29-36), and partially etching an insulator layer between the device layer and a substrate to release the at least one beam with part of the insulator layer remaining to anchor the at least one beam to the substrate. (See Figure 3B and related discussion)

Regarding Claim 14 Hichwa et al. teaches forming at least one of thermal actuator, an electrostatic actuator, a piezoelectric actuator and a magnetic actuator adjacent the at least one beam. (Col. 2, Lines 37-40)

Regarding Claim 19, Hichwa et al. teaches forming at least one spring boundary condition of the at least one beam. (Figures 2B-2D)

**Claims 15, 16 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent application Publication 2003/0029705 A1 to Qiu et al. in view of IBM Technical Disclosure Bulletin (TDB) NN 82024500 and U.S. Patent 6,303,885 to Hichwa et al.**

Regarding Claims 15 and 16, as applied above to claims 1,2 and 4-19, Qiu et al. in view of the cited IBM TDB teaches the method of the invention substantially as claimed, but does not explicitly teach the use of a zipper electrostatic actuator or a thermal impact actuator. Qiu et al. teaches that various actuators are suitable for use with an actuated bistable beam, including a thermal impact actuator (Paragraph 178) and a zipper electrostatic actuator (Paragraph 155).

Art Unit: 1763

It would have been obvious to one of ordinary skill in the art at the time of invention to use the well-known thermal and electrostatic actuators as suggested by Qiu et al. to actuate the bistable beam of Hichwa et al. since Hichwa teaches that electrostatic and thermal actuators are suitable means for driving the bistable beam (Col. 2, Lines 37-40)

Regarding Claims 20-22, as applied above to claims 1,2 and 4-19, Qiu et al teaches the method of the invention substantially as claimed, but does not teach patterning the at least one beam in a device layer of a silicon-on-insulator wafer, defining a height of the at least one beam using a thickness of the device layer, and partially etching an insulator layer between the device layer and a substrate to release the at least one beam with part of the insulator layer remaining to anchor the at least one beam to the substrate.

However, Qiu et al. suggests that various manufacturing methods may be employed especially conventional micro-fabrication techniques in silicon (Paragraph 202)

Hichwa et al. teaches a conventional microfabrication technique used in the patterning of bistable MEMS structures comprising patterning the at least one beam in a device layer of a silicon-on-insulator wafer, defining a height of the at least one beam using a thickness of the device layer, and partially etching an insulator layer between the device layer and a substrate to release the at least one beam with part of the insulator layer remaining to anchor the at least one beam to the substrate.

It would have been obvious to one of ordinary skill in the art at the time of invention to use one of the well-known MEMS fabrication techniques such as shown in Hichwa et al. to form the bistable MEMS structure of Qiu et al. in order to form the bistable MEMS structure using one of several known conventional processing methods.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent application Publication 2003/0029705 A1 to Qiu et al. in view of IBM Technical Disclosure Bulletin (TDB) NN 82024500, and in further view of U.S. Patent 6,367,251 to Wood.**

As applied above to claims 1,2 and 4-19, Qiu et al. in view of the cited IBM TDB teaches the method of the invention substantially as claimed, but does not teach that the height of the beam is greater

Art Unit: 1763

than the width. The relationship between height and width cannot be determined since the illustrations of the beams are not in three dimensions.

Wood illustrates bi-stable beams having a height greater than the width. (Figures 1A and 1B) It would have been obvious to one of ordinary skill in the art at the time of invention to form the beams of Qiu et al. having the relative dimensions as shown in Wood in order to provide a bi-stable beam having the conventional physical and mechanical characteristics as shown in Wood.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,303,885 to Hichwa et al. in view of U.S. Patent Application Publication 2004/0022484 to Sigloch et al. and in further view of U.S. Patent 6,367,251 to Wood.**

As applied above to claims 1,2, 5-14 and 20-22, Hichwa et al teaches the method of the invention substantially as claimed, but does not teach that the height of the beam is greater than the width. The relationship between height and width cannot be determined since the illustrations of the beams are not in three dimensions.

Wood illustrates bi-stable beams having a height greater than the width. (Figures 1A and 1B) It would have been obvious to one of ordinary skill in the art at the time of invention to form the beams of Hichwa et al. having the relative dimensions as shown in Wood in order to provide a bi-stable beam having the conventional physical and mechanical characteristics as shown in Wood.

#### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection as recited below.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1763

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberts Culbert whose telephone number is (571) 272-1433. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on (571) 272-1435. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. Culbert



*p.L*  
**PARVIZ HASSANZADEH**  
**SUPERVISORY PATENT EXAMINER**